Flexible Packaging Association

March 16, 2020

draft_permitting_guidance@epa.gov
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
Cc: Ashley Keas, Project Lead, OAQPS
Scott Mathias, OAQPS

Re: "Draft Guidance on Plantwide Applicability Limitation (PAL) Provisions Under the New Source Review Regulations (Feb. 13, 2020)"

Dear Ms. Keas:

Introduction – The Flexible Packaging Association (FPA) appreciates this opportunity to comment on the Draft PAL Guidance and the EPA's effort to issue the Guidance. Our members, who convert paper, film, foil, or any combination of these materials, into flexible packaging for food, medical and other products have remained interested over the years in the value of a PAL.[1] However, only one site out of all the Association's members has been able to successfully maintain a PAL despite the clear suitability and advantages that it would provide FPA's members. (Another obtained approval of a PAL, but reportedly, it is no longer in use.) This lack of utilization is a direct result of the uncertainty in the existing PAL regulations that this guidance will serve to clarify. We urge the agency to finalize the guidance and to renew the EPA's efforts to familiarize state permit authorities to the regulatory benefits of approving PALs for coating industries like our own that operate presses that are vented (in some cases from a Permanent Total Enclosure covering the entire facility) to a thermal or catalytic oxidizer. FPA's

[1] The FPA was established in 1950 and is a national trade association comprised of manufacturers and suppliers of flexible packaging. The industry produces packaging for food, healthcare, and industrial products using coating and lamination of paper, film, foil, or any combination of these materials. Examples of flexible packaging include rollstock, bags, pouches, labels, liners, wraps, and tamper-evident packaging for food and medicine.
Flexible packaging, a $31 billion industry, employs approximately 79,000 people in the United States and is now the second largest segment of the U.S. packaging market estimated at $162 billion.

comments and questions on the February Draft Guidance are provided below.

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1. **FPA Requests that EPA Clarify that States Need Not Require Minor NSR for New Sources Under a PAL.**

Further clarification is requested by FPA to address concerns of our members in obtaining a PAL regarding the integration (or lack thereof) of the state's minor source construction permit program with the PAL. States that require minor source permitting for PAL facilities defeat the goal of avoiding permitting related delays. By not integrating the minor source with the PAL approach, the full potential of a PAL permit is unrealized and often times not pursued by interested facilities.

To facilitate the use of PALs by business, FPA supports broadening the Draft Guidance to promote state integration of the PAL and minor source permitting programs. For example, Wisconsin will provide an exemption from minor source permitting in the state's minor source State Implementation Plan, when it is final. See proposed Wis. Admin. Code § NR 406.04(1f).

2. **The Single-Most Important Element of the Draft Guidance is that "Ratcheting" a PAL is Not Required and Based on EPA's Survey, is Not Occurring.**

In FPA's view, the concern that has most hindered this industry's interest in PALs is the business risk that State or federal air managers, particularly in nonattainment areas, will confiscate the PAL's "head room (i.e., compliance margin") when the PAL is renewed. Related to this concern is the fact that in a "batching industry," such as flexible packaging, where many presses and laminators do not operate continuously and there can be substantial down-time between different flexible packaging coating jobs while presses are cleaned and re-webbed, the confiscation of PAL-allowable emissions could be based on actual historical operations, rather than more representative emissions, consistent with NSR regulations, that are based on long-runs. Thus, the single most-important feature of the Draft Guidance is how it defuses the "automatic ratchet" PAL myth, most particularly by confirming that even though the regulations include the opportunity for a state permit authority to adjust the PAL after 10 years, none have done so for the 70-or so existing PALs that have been adopted. (pp 6-7). (In FPA's membership, we know that one PAL was adjusted downward.) On this basis, and even though it would require rulemaking, FPA urges the EPA to consider removing the regulatory option for a state permit authority to discount a PAL after ten-years.

Reopening Provisions - FPA's members agree with EPA's assessment on page 3 of the Draft Guidance that of the options that a State may have to reduce NAAQS-related pollutants, reducing annual PAL limit is not well-suited for attaining a short-term NAAQS. On the other hand, with regard to the following discussion on pages 3-4 of the draft pertaining to discounting a PAL per the "discretionary reopening" provisions in the PAL regulation at §52.21(aa)(8)(ii), we are puzzled by the Draft Guidance's direction that when a piece of equipment is shutdown or a replacement unit is subject to a new source performance standard, why the piece of equipment that is shut down and removed would require reducing a PAL. We thought the point of a PAL

was to allow companies the flexibility to shutdown and replace emitting sources with new process units so long as the change would not result in a significant increase in emissions over the PAL limit. Even if the Draft Guidance suggests that State permitting authorities may have the discretion to adjust a PAL through a reopening for NSPS-affected facilities subject to a revised standard (in this industry, this is unlikely) we do not understand why replacement units would require NSR-review during and/or at the termination of a PAL.

The Draft Guidance also is particularly confusing with regard to the applicability of BACT and/or LAER to "replacement units (as defined by CAA § 60.15)," on pages 13-14.[2] First, why would someone have to replace an old piece of equipment *with a* functionally equivalent process unit? In other words, we understood that the purpose of the PAL would be to encourage replacement of equipment, and it would appear from the study that EPA did in 2001-2002 in support of the PAL regulation,[3] that such replacements with new processes or enhanced technology that was not functionally equivalent have produced equal or much superior environmental benefits than BACT or LAER would have achieved had NSR been applicable to each affected unit? Even upon PAL reopening or termination, we are not sure why a non-replacement unit would be subject to NSR BACT or LAER and we would appreciate EPA's explanation of what circumstances might result in a retroactive BACT or LAER review.

3. **<u>The Clarity Provided by EPA on "Why" 40 C.F.R. § 51.166(r)(4) Does Not Affect Potentially-Significant Emission Increases under the PAL When a PAL is Terminated or Expires Also is Especially Helpful.</u>**

The second most important feature of the Draft Guidance is that EPA affirmatively dispatches the notion that NSR avoidance for individual emissions increases that would have triggered PSD or NSR, *but for the PAL*, would *not* trigger "NSR circumvention (e.g., § 51.166(r)(4))" at the termination or expiration of a PAL. (p. 4) This is reassuring to FPA's members. While some of argued to the contrary, we think that it is far more persuasive to argue that a company that adopts a PAL does so to simplify NSR by agreeing to wire all emission increases within the plant to enforceable monitoring to remain under a facility-wide emission limit. Thereafter the one NSR limit that they can possibly "circumvent" would be the PAL limit. After approval of a PAL

[2] On pages 13-14, the Guidance states: "The regulations are clear that a replacement unit is an existing emissions unit, and thus for the purpose of the initial NSR applicability analysis, emissions increases must be calculated using the actual-to-projected-actual applicability test. The regulations are also clear that for this initial analysis, baseline actual emissions must be those associated with the replaced unit. The question that has been raised is whether the same approach is required for subsequent analyses of a replacement unit, such as subsequent modification of the unit, or calculating the unit's baseline actual emissions for the purpose of determining the level of a PAL . . . *(Referring to the Nov. 7, 2003 NSR reconsideration rule)* EPA did not at that time indicate, nor do we now believe, that this reasoning would cease to apply once the replacement activity is completed. Therefore, we are confirming our interpretation of the EPA NSR regulations to provide that, for a replacement unit (as defined in the regulations), the baseline actual emissions from the unit that was replaced carry over to the replacement unit for purposes of both the initial and any subsequent NSR analyses, including determining baseline actual emissions for the purpose of setting the level of a PAL.

[3] See, M. Trutna & B. Parker, OAQPS, Evaluation of Implementation Experiences with Innovative Air Permits: Results of the U.S. EPA Flexible Permit Implementation Review (PDF) (2002).

limit, the facility cannot thereafter be found in violation of NSR for removing an enforceable limit for individual processes under the PAL because they no longer exist.

FPA, therefore, agrees with EPA's assertion that when a PAL expires, none of the limits on capacity to emit covered by 40 CFR § 52.21(r)(4) that the PAL originally eliminated are required to be re-established and indeed those allowable emissions can be re-distributed among processes pursuant to the PAL regulations. The only time that § 51.166(r)(4) might be applicable, FPA agrees, is if a significant increase in NSR pollutants caused by a physical change or change in the method of operation after the PAL is terminated would be projected to result in a significant limit over the PAL "caps" for NSR pollutants because those increases would then would exceed the practically enforceable (PAL) limit.

On the other hand, FPA is puzzled by EPA's statement on page 14 of the Draft Guidance that the "relaxation of such limits, even absent any other physical change or change in the method of operation of the unit(s) subject to the limit, would qualify as a change in the method of operation." *Id.* It appears that EPA is suggesting that the mere termination or adjustment of the PAL is subject to NSR because expiration of a PAL is an NSR-applicable "change in the method of operation. By itself, termination of a PAL, is not *per se* a change in the method of operation, if it is unaccompanied by a significant increase in one or more NSR pollutants at the source, after Step 1 and Step 2 NSR assessment is done and creditable emission increases and decreases are considered for NSR related pollutants from the change. FPA would appreciate confirmation of its understanding and/or further elucidation of what was meant by this section of the Draft. The statement appears inconsistent with the PAL requirements *and* antithetical to the NSR regulations that require that a physical change or change in the method of operations must result in an increase in an NSR pollutant to trigger PSD and/or NNSR.

4. **Monitoring § 52.21 (aa)(12)**

Flexible packaging facilities are subject to a variety of enhanced compliance assurance monitoring techniques under the NESHAPS for the Printing and Publishing MACT (40 CFR Part 63, Subpart KK) and/or the Paper and Other Web Coating MACT (40 CFR Part 63, Subpart JJJJ). These include continuous parametric monitoring of temperatures on a thermal oxidizer and/or recordkeeping of all inks and coatings utilized in manufacturing flexible packaging. Indeed, it is the applicability of these stringent regulatory requirements that can make PALs so appealing to the industry. Therefore, FPA suggests that the EPA should include in the PAL Guidance, a presumption that MACT monitoring is the recommended enhanced monitoring for a PAL, although we appreciate that the PAL regulations were never intended to "pre-judge" the type of monitoring required for a PAL or to require a top-down approach for selection of appropriate PAL monitoring.

5. **The Guidance Raises Cautionary Flags with Respect to Adjustment of the PAL with New Emission Factors and EPA Should Take this Opportunity to Assure PAL Operators that Good Faith Use of Factors that are Adjusted on the ERT Can Adjust a PAL with Impunity.**

EPA's enforcement of NSR based on the adjustment of emission factors justifiably has created consternation in the last two decades across many industries, and it was not unexpected that this issue also has arising with respect to PALs. (It would be interesting to know if there have been particular case studies of how such an issue has been dealt with and this would be a good topic for a more formal evaluation of the 70 or so PALs that the EPA Regions reported to Headquarters.) FPA has raised the concern over NSR and Title V permitting issues, particularly with the recent adoption of the EPA emission reporting tool ("ERT"), which has as one of its goals, to "continuously" collect emission testing information from industries to "upgrade" existing emission factors. We have argued that if an industry has in good faith utilized published emission factors, and those factors have been revised, the owner or operator of a source should be able to adjust its facility emission inventory with impunity. FPA suggests that the Final Guidance take the same approach in addition to reminding sources with PALs that the adjustment of a relevant emission factor on EPA's website could result in a tighter or more lenient PAL limit.

(c) Missing Data and Data Replacement Conventions for PALs

FPA appreciates EPA's discussion of missing monitoring data and how such gaps are filled. The Draft Guidance presents a rational and appropriate method for handling missing data.

6. **Re-distribution of Allowable Emissions When A PAL Expires, is Renewed, or is Terminated**

Renewal - As we discussed earlier in these comments, FPA's members agree that the reluctance of more industry to adopt PALs has centered on the issue of a State's ability to "discount" a PAL upon renewal. Another issue that is related is a fear that State permit authorities will not only discount a PAL limit on termination, but that they are authorized to redistribute allowable emissions under a former PAL limit on termination and/or renewal of a PAL. Particularly if the PAL is simply being renewed, state permit authorities should be cautioned about redistribution of emissions between processes and/or other emitting units. FPA's members were reassured by EPA's discussion on pages 4-5 of the Draft Guidance that emphasized that it was up to the regulated source to propose any emissions reallocation in the rare case that a PAL was discounted on renewal or termination. FPA believes that State Permitting Authorities would expect, consistent with the regulations and the Draft Guidance, for the source to propose a reallocation plan, and that it would be negotiated during a public permit application proceeding with the relevant authorities.

Conclusion and Recommendation

FPA believes that the Draft Guidance on the operation of PALs is timely and consistent with the regulation. We hope that it will result in State air-planners being more receptive to PAL applications, which can save administrative resources for agencies after a PAL is approved. Again, FPA appreciates the opportunity to submit our comments and questions on the Draft Guidance. If you have questions for us, please do not hesitate to contact me at 410-694-0823 or rsinghal@flexpack.org.

With best regards,

Ram Singhal, Vice President, Technology & Environmental Strategy